

REMARKS

This Response is submitted in reply to the Final Office Action dated December 1, 2008. Claims 7-12 are pending in this application and Claims 7-12 are rejected. In the amendment, Claims 13-16 are newly added. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit the rejections are improper and should be withdrawn.

Rejections under 35 U.S.C. 102

The Office Action rejected Claims 7-12 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. 2004/0176032 to Kotola et al. ("Kotola"). In doing so, the Examiner relied on the filing date of Kotola's parent application as Kotola's effective filing date. See Office Action, page 3, lines 4-8. However, Applicants maintain that the Kotola reference is not proper prior art to the present application.

The MPEP states that the filing date of a U.S. parent application can only be used as the 35 U.S.C. 102(e) date if it supports the subject matter relied upon in the child, such as a continuation-in-part application. MPEP 2136.03 IV. "In other words, the subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph, in order for the subject matter to be entitled to the earlier filing date under 35 U.S.C. 102(e)." *Id.*

Kotola was filed on March 19, 2004 and is a continuation-in-part of Application No. 10/105,320 which was filed on March 26, 2002. As a continuation in part application, Kotola contains new matter that is not supported by the parent application. At a minimum, Applicants submit that paragraphs [0059]-[0104] and [0108]-[0109] and Figs. 5A-5C and 9-9A of Kotola are not supported by the parent application.

The Examiner relies extensively on paragraphs [0073] and [0108] and Figs. 9 and 9A to teach the elements of Claims 7-12. See Office Action, pages 4-7. However, Applicants respectfully submit that paragraphs [0073] and [0108] and Figs. 9 and 9A of Kotola are not supported by the parent application as previously discussed. Thus, the rejection relies on subject matter of Kotola that is not disclosed in the parent application, and that subject matter is not entitled to the earlier filing date of the parent application. Therefore, the earliest effective prior art date of Kotola as relied on by the Examiner is its own filing date, March 19, 2004.

Because the Japanese priority date of the present application, June 6, 2003, is before the earliest effective prior art date of Kotola, March 19, 2004, Kotola is not proper prior art to the present application. Accordingly, Applicants respectfully request the 35 U.S.C. 102(e) rejection with respect to Claims 7-12 be reconsidered and the rejection withdrawn.

New Claims

Applicants further note that Claims 13-16 are newly added. The Claims are fully supported by the specification. For example, see paragraphs [0059]-[0070] and [0115]-[0124] of the specification and Figs. 5 and 13 of the amendment dated August 21, 2008.

Applicants respectfully submit that the subject matter as defined in the newly added claims is patentable over the cited art of record for at least the same reasons as discussed above, and for the additional patentable elements recited therein. For example, the cited prior art fails to disclose, at a minimum, “the first communication protocol and the second communication protocol are a lower layer protocol to the logical communication protocol” and “acquires identification information used to execute the wireless communication using the first communication protocol and setting information used to establish the wireless communication using the second communication protocol, through the communication using the first communication protocol” as recited in Claim 13.

Conclusion

For at least the foregoing reasons, Applicants respectfully submit the present application is in condition for allowance and earnestly solicit reconsideration of the same.

The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing. If such a withdrawal is made, please indicate the Attorney Docket No. 112857-832 on the account statement.

Respectfully submitted,

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